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No. 07-10374

IN THE

Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

—v.—

CURTIS DROWN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE NEW YORK COURT OF APPEALS

BRIEF OF *AMICI CURIAE* PROFESSORS OF CONSTITUTIONAL LAW AND OF FEDERAL JURISDICTION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae listed in Appendix A are professors of constitutional law and of federal jurisdiction. *Amici* hold different views on many issues related to federal courts jurisprudence as well as the theories and interpretive practices of constitutional law. *Amici* come together in this case because of their shared recognition of the importance of the interdependence of the federal and state court systems. They are concerned that the decision of the New York Court of Appeals reflects serious misunderstandings both of the Supremacy Clause and of this Court's jurisprudence on the role of state courts in adjudicating cases under 42 U.S.C. § 1983.

SUMMARY OF ARGUMENT

As professors who study civil procedure, federal jurisdiction, and constitutional issues, *amici* believe that the decision of the New York Court of Appeals in *Haywood v. Drown*, 881 N.E.2d 180 (N.Y. 2007), *cert. granted,* 128 S. Ct. 2938 (2008), fails to recognize the role of state courts in applying federal law and incorrectly denies the obligation of New York state courts to enforce a remedy in a federal statute. The Supremacy Clause makes federal law

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

Amici thank Georgetown University Law Center student Thomas N. Saunders for research assistance.

the law of the land, and, as the Court has long emphasized, a state court is as much "subject . . . to the laws of the United States, and is just as much bound to recognize these [laws of the United States] as operative within the State as it is to recognize the State laws." *Claflin v. Houseman*, 93 U.S. 130, 137 (1876). When a state entertains federal causes of action, as New York has done, it has an obligation to follow and to apply federal law, and must provide the remedies available under federal law. *See infra* at Point I.

New York Correction Law § 24 bars all damages claims in state court against state corrections officers individually for actions undertaken as they discharge their duties. N.Y. Correct. Law § 24 (2003). As applied to Mr. Haywood's claim, New York Correction Law § 24 contravenes the Supremacy Clause, both by creating an absolute immunity for corrections officers that does not exist under federal law and by extinguishing the damages remedy that does exist against such defendants.

The issue here is *not* whether New York has an obligation to entertain § 1983 actions. New York has made it unnecessary to ask that question by electing to have its courts regularly hear § 1983 actions for damages against various state and local government employees and by permitting § 1983 claims for declaratory and injunctive relief against state corrections officers. What Correction Law § 24 does is exempt one set of defendants, state corrections officers, from liability for damages under federal law when those cases are litigated in New York state courts, thereby extinguishing a remedy

and creating a new defense to § 1983 actions in New York state courts. New York lacks the power to reshape federal law in this fashion. *See infra* at Point II.

The New York Court of Appeals upheld Correction Law § 24 on the ground that it is a neutral jurisdictional rule applicable to both state and federal claims and that, as such, it affords the State of New York a "valid excuse" to eliminate a federal remedy against a narrow class of defendants. The Court of Appeals's use of the jurisdictional label is at odds with decisions of the Court as to what constitutes a "neutral rule of judicial administration" for purposes of determining whether a state has a "valid excuse." *See infra* at Point III.[2]

Correction Law § 24 simply reflects the state's disagreement with the content of federal law. Extinguishing a federal remedy for such a reason is not a "valid excuse" under the Court's jurisprudence.

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[2] The Court of Appeals decision also fails to appreciate the Court's long-standing recognition that, under federal law, questions of "jurisdiction" and "relief" reflect two separate inquiries. *See Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 561 (1968) ("The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy."); *see also Davis v. Passman*, 442 U.S. 228, 239 n.18 (1979) ("*jurisdiction* is a question of whether a federal court has the power . . . to hear a case . . . and *relief* is a question of the various remedies a federal court may make available"). Notwithstanding the Court of Appeals's use of the jurisdictional label, this is not a case where — as a matter of federal law — a state's jurisdiction is limited, but one in which a state has attempted to extinguish a remedy expressly granted by federal law.

As applied to § 1983 actions, Correction Law § 24, therefore, violates the Supremacy Clause and contravenes the obligation of state courts to enforce federal law.

ARGUMENT

I. In Our Federal System, When a State Enforces Federal Law, It May Not Selectively Modify the Federal Remedies Provided

The federal "constitution and the laws made in pursuance thereof are supreme; . . . they control the constitution and laws of the respective States, and cannot be controlled by them." *McCulloch v. Maryland*, 17 U.S. 316, 426 (1819). This proposition is rooted in the Supremacy Clause, which provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, § 2.

Supremacy is intrinsic to our system of governance because the federal government "is the government of all; its powers are delegated by all; it represents all, and acts for all." *McCulloch*, 17 U.S. at 405. Supremacy requires that "[t]he nation, on those subjects on which it can act, must necessarily

bind its component parts," *id.*, and once "Congress has acted, the laws of the states, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is." *Mondou v. New York, New Haven & Hartford R.R. Co.*, 223 U.S. 1, 55 (1912).

Consistent with the supremacy of federal law, state courts and federal courts "together form one system of jurisprudence," which allows for "rights, whether legal or equitable, acquired under the laws of the United States, [to] be prosecuted in the United States courts, or in the State courts, competent to decide rights of the like character and class." *Claflin*, 93 U.S. at 136-37; *see also U.S. v. Bank of N.Y. & Trust Co.*, 296 U.S. 463, 479 (1936) ("Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them."). Indeed, until 1875, when Congress first provided general federal question jurisdiction to the lower federal courts, "the state courts provided the only forum for vindicating many important federal claims." *Palmore v. U.S.*, 411 U.S. 389, 401 (1973).

In recognition of the role state judicial proceedings play in the enforcement of federal rights and remedies, such proceedings, including § 1983 actions, have *res judicata* and collateral estoppel effect in federal court, *see Allen v. McCurry*, 449 U.S. 90, 95-96 (1980). The goal, as the Court explained, is not only to "reduce unnecessary litigation and foster reliance on adjudication, but also promote the comity

between state and federal courts that has been recognized as a bulwark of the federal system." *Id.*

As the Court has frequently recognized, in order for this interdependent system of federal and state courts to function properly, when state courts address federal claims, they cannot change the remedial scheme that federal law provides. *See Testa v. Katt*, 330 U.S. 386, 391 (1947) (holding that the obligation of the state courts under the Supremacy Clause to enforce federal laws "is not lessened by the form in which they are cast or the remedy which they provide").[3] If a state rule would "'frequently and predictably produce different outcomes' depending on whether § 1983 claims were brought in state or federal court, it [is] inconsistent with the federal interest in uniformity." *Johnson v. Fankell*, 520 U.S. 911, 920 (1997) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)). States "may not alter the outcome of federal claims . . . by demanding compliance with outcome-determinative rules that are inapplicable when such claims are brought in federal court." *Felder*, 487 U.S. at 152.

The Court has held expressly that states cannot decline jurisdiction over a federal claim on the ground that "[an] act of Congress is not in harmony

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[3] This precept is as true for § 1983 claims as for other federal actions. *See* Steven H. Steinglass, *Litigating Section 1983 Actions in State Courts*, 731 PLI/Lit 921, 927-937 (2005) (discussing concurrent jurisdiction over § 1983 actions). For discussion of the authority of federal courts to shape the remedies available for deprivations of federal rights, *see* Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 Harv. L. Rev. 1733 (1991).

with the policy of the state"; rather, a state court's jurisdiction to hear a federal claim "creates an implication of duty to exercise it." *Mondou*, 223 U.S. at 57-58; *see Testa*, 330 U.S. at 394 (state courts with adequate jurisdiction to adjudicate federal claims "are not free to refuse enforcement of [the] claim"); *Tafflin v. Levitt*, 493 U.S. 455, 466 (1990) ("To hold otherwise would not only denigrate the respect accorded coequal sovereigns, but would also ignore our consistent history of hospitable acceptance of concurrent jurisdiction." (quotation marks omitted)). So engrained is the presumption of state court jurisdiction that "an affirmative act of power under the Supremacy Clause" is required "to oust the States of jurisdiction." *Id.* at 470 (Scalia, J., concurring).[4]

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[4] For a discussion of the benefits of concurrent jurisdiction, *see* Lauren Robel, *Impermeable Federalism, Pragmatic Silence, and the Long Range Plan for the Federal Courts*, 71 Ind. L.J. 841, 850 (1996) ("[J]urisdictional redundancy is a blessing, allowing for the development of empathy between the sovereigns, and an enrichment of the law. Litigants have certainly benefited from the ability to make choices about the expertise and neutrality of the forum in which to bring their claims . . . [and] [w]e can largely ignore many unanswerable issues about parity between state and federal courts by giving litigants choices about where to pursue federal claims, while maximizing the possibility that deserving federal claims will be vindicated."). *See also* Robert M. Cover, *The Uses of Jurisdictional Redundancy: Interest, Ideology and Innovation*, 22 Wm. & Mary L. Rev. 639 (1981).

Erwin Chemerinsky points to the concurrent jurisdiction provided by many federal statutes "as embodying a desire to allow litigants with constitutional claims to choose between federal and state courts" and observes further that "a virtue of this approach is that it rests on the simple premise that Congress intended federal courts to provide an alternative

Correction Law § 24 and the decision of the New York Court of Appeals fail to adhere to these fundamental principles. New York Correction Law § 24 provides, in pertinent part:

> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department [of corrections], in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

N.Y. Correct. Law § 24.

Correction Law § 24 thus requires that claims for damages that would be brought against state corrections officers in the New York supreme courts (including claims under § 1983) be brought *instead* against the State of New York in the state court of

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forum to state courts for the protection of constitutional rights." Erwin Chemerinsky, *Ending the Parity Debate*, 71 B.U. L. Rev. 593, 604 (1991).

claims. Because, under the Court's decision in *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989), states do not qualify as "person[s]" against whom actions for damages may be maintained under § 1983, the effect of Correction Law § 24 is to extinguish the federal damages remedy of § 1983 altogether in actions against state corrections officers individually.[5]

As a general matter, New York's courts of general jurisdiction (named its supreme courts) hear § 1983 actions.[6] These courts entertain all § 1983 claims except for damages claims against state corrections officers. *See Haywood*, 881 N.E.2d at 191 (Jones, J., dissenting). Indeed, the New York supreme courts hear § 1983 claims for injunctive or declaratory relief against state corrections officers, which Correction Law § 24 does not bar, and hear claims for damages under § 1983 against other

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[5] The New York courts have followed *Will* without question. *See*, *e.g.*, *Brown v. New York*, 674 N.E.2d 1129 (N.Y. 1996) (recognizing that, under federal law, state is not a "person" under 42 U.S.C. § 1983 and, accordingly, any claim under § 1983 or § 1981 *against the State of New York* is barred); *Lyles v. New York*, 752 N.Y.S.2d 523, 525 (Ct. Cl. 2002), *aff'd*, 770 N.Y.S.2d 81 (App. Div. 2003) (acknowledging the "settled" federal law that "the State is not 'a person' within the meaning of section 1983" and that, accordingly, "no action will lie against the State" under § 1983 or § 1981 (citing *Brown*)).

[6] Because New York supreme courts entertain § 1983 actions, this case presents no occasion for the Court to decide whether state courts *must* entertain such actions. *See Martinez v. California*, 444 U.S. 277, 283 n.7 (1980) ("We have never considered . . . the question whether a State *must* entertain a claim under § 1983."); *Nat'l Private Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995).

government employees, including city and county corrections officers.[7] By means of Correction Law § 24, however, New York has selectively closed its doors to a subset of such claims — those that seek a damages remedy against state corrections officers.

II. New York Lacks the Authority to Deprive Section 1983 Claimants of a Damages Remedy

A. Section 1983 Expressly Provides a Damages Remedy Against Individuals

A principal purpose of § 1983 was to enforce the Fourteenth Amendment to the Constitution and to provide a federal cause of action for deprivations, under color of state law, of any right guaranteed by the Fourteenth Amendment. *See Mitchum v. Foster*, 407 U.S. 225, 238, 240 (1972); *Monroe v. Pape*, 365 U.S. 167, 171 (1961), *overruled in part by Monell v. Dep't of Soc. Servs. of the City of N.Y.*, 436 U.S. 658, 663 (1978). "The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those 'fundamental principles of liberty and justice' that are contained in the Bill of Rights and 'lie at the base of all our civil and political institutions.'" *Wilson v. Garcia*, 471

[7] *See, e.g., Lopez v. Shaughnessy*, 688 N.Y.S.2d 614 (App. Div. 1999) (reversing dismissal of § 1983 action against county corrections officers); *Cooper v. Morin*, 375 N.Y.S.2d 928 (App. Div. 1975) (same); *Hernandez v. City of New York*, 799 N.Y.S.2d 369 (Sup. Ct. 2005) (allowing amended complaint against city department of corrections).

U.S. 261, 278 (1985); *see also*, *Cong. Globe*, 42d Cong., 1st Sess. 335 (1871).

Section 1983 provides that "'(e)very person' who acts under color of state law to deprive another of a constitutional right shall be answerable to that person in a suit for damages." *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976). The plain language of the statute makes clear that when a plaintiff proves the violation of a federal right by someone acting under color of state law, the defendant "shall be liable to the party injured . . . for redress" and that "[e]very person . . . shall be liable." 42 U.S.C. § 1983. Indeed, this Court has recognized that a primary purpose of § 1983 is to provide such compensation. *Carey v. Piphus*, 435 U.S. 247, 254-57 (1978).

The fact that a plaintiff may recover damages directly from an individual is a critical component of § 1983: "In enacting § 1983, Congress entitled those deprived of their civil rights to recover full compensation from the governmental officials responsible for those deprivations." *Felder*, 487 U.S. at 153; *see Carey*, 435 U.S. at 256-57; *Monroe*, 365 U.S. at 176-77. The availability of damages from an individual also serves the purpose of deterrence. *Memphis Comm. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986).[8] Damages recoverable under § 1983

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[8] In concluding that a municipality was not entitled to immunity, the Court likewise recognized that "[a] damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 651 (1980).

"Additionally, damage awards are one way of affirming legal rights and thus of educating the moral sentiments of the community." Peter W. Low & John C. Jeffries, Jr., *Federal*

include monetary harm, reputational injuries, and mental and emotional distress. *Id.* (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) and *Carey*, 435 U.S. at 264). In addition, punitive damages are available against certain defendants in § 1983 cases, upon a showing of requisite intent. *Smith v. Wade*, 461 U.S. 30, 56 (1983).[9] When explaining the remedial parameters, the Court has frequently cited the legislative history of § 1983.[10]

B. A State May Not Create a New Defense to a Federal Law by Immunizing a Class of Defendants

Over many decades and in a range of contexts, the Court has carefully defined the criteria to be met for a § 1983 claim, including the showing necessary for liability and the defenses available. In particular,

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Courts and the Law of Federal-State Relations 1107 (5th ed. 2004).

[9] Under 42 U.S.C. § 1988 (2006), § 1983 defendants also may be liable for attorney's fees. This aspect of the remedy, the Court noted in *Carey*, "provides additional — and by no means inconsequential — assurance that agents of the State will not deliberately ignore due process rights." 435 U.S. at 257 n.11. *See also Maine v. Thiboutot*, 448 U.S. 1, 11 (1980) (recognizing that attorney's fees are integral part of remedies necessary under § 1983).

[10] Commenting on the congressional debates with respect to § 1 of the Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13 (1871) (current version at 42 U.S.C. § 1983 (2006)), which was the predecessor to § 1983, the Court in *Monell*, for example, observed that "[i]n both Houses, statements of the supporters of § 1 [of the Civil Rights Act of 1871] corroborated that Congress . . . intended to give a broad remedy for violations of federally protected civil rights." 436 U.S. at 685.

the Court has established a comprehensive set of immunities predicated on "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Owen v. City of Independence, Mo.*, 445 U.S. 622, 638 (1980) (quoting *Imbler*, 424 U.S. at 421). The Court has not construed § 1983 to grant such an immunity unless that immunity was "well established at common law at the time § 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act." *Id.* at 638.[11] Such immunities, because they derive from the Court's interpretations of § 1983, are controlled by federal law. *See*, *e.g.*, *id.* at 647 n.30 (stating with respect to municipalities, that immunity defenses to a federal action "are, of course, controlled by federal law"); *see also Howlett v. Rose,* 496 U.S. 356, 375 (1990) ("The elements of, and the defenses to, a federal cause of action are defined by federal law.") (citing *Monessen Sw. Ry. Co. v. Morgan*, 486 U.S. 330, 335 (1988); *Chesapeake & Ohio Ry. Co. v. Kuhn*, 284 U.S. 44 (1931)).[12]

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[11] Further, "[a]lthough an immunity must be grounded in history for the Supreme Court to decide that Congress intended to incorporate it in § 1983 jurisprudence, the mere fact that an immunity has some historical roots does not mean that the Court will automatically recognize it. Even when the Court can identify a common law tradition, the Court has consistently considered 'whether § 1983's history or purposes nonetheless counsel against recognizing the same immunity in § 1983 actions.'" 2 Rodney A. Smolla, *Federal Civil Rights Acts* § 14:27 (3d ed. 2001) (quoting *Tower v. Glover*, 467 U.S. 914, 920 (1984)).

[12] *See generally* Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1122 (5th ed. 2003) (explaining that federal law "governs the immunity"

Under federal law, corrections officers are entitled to qualified, not absolute, immunity. *Procunier v. Navarette*, 434 U.S. 555, 561 (1978); *see also Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (explaining that, under federal law, a state corrections officer is immune from liability for § 1983 damages provided the officer "did not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known'") (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). As with other such immunities, the recognition of qualified immunity for state corrections officers and other prison officials was predicated on "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Owen*, 445 U.S. at 637-38 (quoting *Imbler*, 424 U.S. at 421) (referencing the Court's grant of qualified immunity to state prison officials and officers in *Procunier*, 434 U.S. at 561).[13]

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in actions based on federal law "even when brought against state officials"); Steven H. Steinglass, *An Introduction to State Court Section 1983 Litigation,* in *Sword and Shield: A Practical Approach to Section 1983 Litigation* 139, 174-75 (Mary Massaron Ross & Edwin P. Voss, Jr. eds., 3d ed. 2006) (explaining the nature of § 1983 immunities and that federal law governs their availability).

[13] Other immunities of varying scope apply to different state and local officials sued under § 1983. *See, e.g., Imbler*, 424 U.S. at 431 (absolute immunity for prosecutors in initiating and presenting the State's case); *O'Connor v. Donaldson*, 422 U.S. 563, 577 (1975) (qualified immunity for superintendent of state hospital); *Wood v. Strickland*, 420 U.S. 308, 322 (1975) (qualified immunity for local school board members); *Scheuer v. Rhodes*, 416 U.S. 232, 247-48 (1974) (qualified immunity for state Governor and other executive officers for discretionary

The immunity created by New York Correction Law § 24 is not such an immunity. New York completely frees state corrections officers from suits for damages in any New York court for actions taken in their official capacity and in the scope of their duties. Because it significantly expands the immunity provided under federal law, to the extent Correction Law § 24 applies to § 1983 actions, it is void under the Supremacy Clause.[14] *See Martinez v. California*, 444 U.S. 277, 284 n.8 (1980) ("Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the [S]upremacy [C]lause of the Constitution insures that the proper construction may be enforced.") (citing *Hampton v. City of Chicago*, 484 F.2d 602, 607 (7th Cir. 1973), *cert. denied*, 415 U.S. 917 (1974)).[15]

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acts performed in the course of official conduct), *abrogated on other grounds by Harlow*, 457 U.S. 800, *and Davis v. Scherer*, 468 U.S. 183 (1984). *See generally Owen*, 445 U.S. at 637-38.

[14] Given the legislative history of § 1983, including the distrust of state courts evidenced therein, *see Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 505-506 & n.9 (1982), there is no basis to conclude that Congress intended to permit states to have the power to curtail federal remedies and exempt a particular group from liability.

[15] Although Congress, through legislation such as the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. §§ 1997-1997j (2006), and the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66 to 1321-77 (codified in scattered sections of the U.S.C.), has enacted limitations on § 1983 claims by prisoners, Congress has not

C. A State May Not Extinguish a Damages Remedy Provided by Federal Law

A state and its courts may not extinguish a federal remedy. In *Dice v. Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359 (1952), the plaintiff brought claims under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60 (2006), in state court. Relying on a state common law doctrine that signed releases, even if fraudulently obtained, defeated any right to damages, a state appellate court overturned a verdict in the plaintiff's favor. The Court reversed and reinstated the verdict, stating:

> State laws are not controlling in determining what the incidents of this federal right shall be. Manifestly the federal rights affording relief to injured railroad employees under a federally declared standard could be defeated if states were permitted to have the final say as to what defenses could and could not be properly interposed to suits under the Act. Moreover, only if federal law controls can the federal Act be given the uniform application throughout the country essential to effectuate its purposes.

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expanded the immunity of state corrections officers. As set forth above, for New York to do so here is inconsistent with Congressional intent and void under the Supremacy Clause. *Cf. Felder*, 487 U.S. at 149.

Id. at 361 (citation omitted). *See also Brown v. W. Ry. of Ala.*, 338 U.S. 294, 299 (1949) (holding that "desirable uniformity in adjudication of federally created rights could not be achieved" if overly-exacting state pleading requirements were allowed to defeat recovery under FELA).

As with FELA, the

> benefits of the [Civil Rights] Acts were intended to be uniform throughout the United States, . . . the protection to the individual to be afforded by them was not intended by Congress to differ from state to state, and . . . the amount of damages to be recovered by the injured individual was not to vary because of the law of the state in which the federal court suit was brought.

Basista v. Weir, 340 F.2d 74, 86 (3d Cir. 1965). The court in *Basista* went on to note that "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Id.* at 87 (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).[16]

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[16] Even when federal statutes do not expressly address a component of a damages remedy, the Court has held that applicable state provisions must not be "inconsistent with the federal policy underlying the cause of action under consideration." *Robertson v. Wegmann*, 436 U.S. 584, 590 (1978) (quoting *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 465 (1975)).

Unlike New York and its courts, other state courts entertaining § 1983 claims have held that substantive state limitations on remedies available for violations of § 1983 are not enforceable in their courts. For example, the Supreme Court of Oregon, sitting *en banc*, concluded that it could not apply the limitations on compensatory damages in the Oregon Tort Claims Act to a § 1983 claim. *Rogers v. Saylor*, 760 P.2d 232 (Or. 1988) (en banc). Stating that "[n]either the Oregon legislature nor the Oregon courts can limit the rights that a plaintiff has in a federal claim, even when that federal claim is brought in state court," *id.* at 242, the Oregon court determined that the state cap on compensatory damages was tantamount to an impermissible grant of "partial immunity to persons acting under color of law for wrongful conduct under section 1983." *Id.* at 238. Citing *Felder*, *Owen*, and *Smith*, the Oregon court also held that the same Oregon statute could not be applied to eliminate punitive damages for § 1983 claims. *Id.* at 239.[17]

The Court has never upheld a state-created barrier to a § 1983 plaintiff's recovery. To the contrary, the Court in *Felder* expressly rejected a

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[17] Other state courts have similarly recognized that states may not limit the damages available for § 1983 claims. *See Sundholm v. City of Bettendorf*, 389 N.W.2d 849, 853 (Iowa 1986) (regardless of state law, plaintiff has right to seek damages that would be recoverable under § 1983); *Thompson v. Village of Hales Corners*, 340 N.W.2d 704, 708-09 (Wis. 1983) (state-imposed limits on liability do not apply to federal claims, including § 1983); *Janda v. City of Detroit*, 437 N.W.2d 326, 331 (Mich. Ct. App. 1989), *appeal denied*, 434 Mich. 901 (1990) (federal, not state, standards govern damages for deprivation of federal right).

state-created limitation on the right of recovery under § 1983, where that restriction was "manifestly inconsistent with the purposes of the federal statute." 487 U.S. at 141. Like the state rule in *Felder*, New York's refusal to adjudicate and enforce the damages remedy available under § 1983 against state corrections officers "thwart[s] the congressional remedy", *id.* at 139, and is "patently incompatible with the compensatory goals of the federal legislation." *Id.* at 143.[18]

III. The Court of Appeals Mischaracterized Section 24 as Jurisdictional and Incorrectly Found that It Provided a "Valid Excuse" for Denying a Federal Remedy

In analyzing Correction Law § 24, the Court of Appeals referred to the principle that "[t]he Supremacy Clause gives states the power to deny enforcement of a federal right if they have a 'valid excuse' for doing so" *Haywood*, 881 N.E.2d at 183 (quoting *Howlett*, 496 U.S. at 369) (quotation marks omitted). The Court of Appeals cited *Howlett* for the proposition that "[o]ne permissible exception" that allows states to deny enforcement of a federal right is "when a state court lacks jurisdiction due to a

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[18] In *Felder*, the respondents sought to distinguish the notice-of-claim provision at issue from "statutory limits on recovery" and "partial immunities," which they conceded were "preempted." 487 U.S. at 142. Correction Law § 24's extinguishment of a damages remedy in § 1983 actions against corrections officers goes well beyond either a notice-of-claim provision or a statutory limit on damages. Accordingly, under *Felder*, this provision is clearly inconsistent with federal law. *Id.*

'neutral state rule regarding the administration of the courts'." *Id.* at 184. Concluding that Correction Law § 24 is such a rule, the Court of Appeals found that the State of New York had a "valid excuse" for denying enforcement of a federal right. *Id.*

The Court of Appeals committed a critical error in its analysis because it failed to acknowledge that the jurisdiction of New York's supreme courts is in fact wholly "adequate and appropriate under established local law" to hear damages claims and award damages remedies under § 1983. *Howlett*, 496 U.S. at 374 (quoting *Testa*, 330 U.S. at 394). The New York courts entertain such damages claims, and award such damages remedies, against other state and local government employees.[19] The New York courts are therefore "fully competent to provide the remedies [§ 1983] requires." *Howlett*, 496 U.S. at 378-79.

Correction Law § 24 is plainly not a "neutral state rule regarding the administration of the courts," *Haywood*, 881 N.E.2d at 184 (quoting *Howlett*, 496 U.S. at 372), under the Court's precedents in *Douglas v. New York, New Haven & Hartford R.R. Co.*, 279 U.S. 377 (1929), *Herb v. Pitcairn*, 324 U.S. 117 (1945), and *Missouri ex rel. S.*

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[19] *See* Point I *supra*; *see also Woodward v. New York*, 805 N.Y.S.2d 670, 675 (App. Div. 2005) (Kane, J., dissenting) (stating that, notwithstanding Correction Law § 24, the New York supreme courts are courts of "general jurisdiction that . . . entertain[] both State and 42 USC § 1983 damages claims against State employees. Additionally, as defendants have conceded here, [New York] Supreme Court retains jurisdiction to adjudicate claims for injunctive and declaratory relief against DOCS officers and employees under [§ 1983].")

Ry. Co. v. Mayfield, 340 U.S. 1 (1950). In each of those three cases (which are the only cases in which the Court has found a jurisdictional rule to constitute a "valid excuse"), the state rule required either conduct or the presence of the parties within the city or state where the claim would be heard, without which there would be no jurisdiction. *See Howlett*, 496 U.S. at 381.

In *Douglas*, for example, the plaintiff's residence, the place where the injuries occurred, and the defendant's residence were all outside the state where the claim had been brought. 279 U.S. at 385. In *Herb*, a provision of the state constitution rendered city courts without jurisdiction in any case where the cause of action arose outside the city, but allowed such cases to be brought in the county circuit court. 324 U.S. at 118-120. *Mayfield* simply concerned enforcement of the state's *forum non conveniens* doctrine. 340 U.S. at 3. None of these cases involved the extinguishment of a federal remedy against parties — such as state corrections officers — who are plainly within the state's boundaries and subject to its jurisdiction.

As the Court has emphasized, the fact that a state court has chosen to describe a rule as jurisdictional does not transform it into a law that properly addresses the personal and subject matter jurisdictional limits of state courts. "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Howlett*, 496 U.S. at 382-83 (holding that to rule otherwise would permit a state to "overrule our decision in *Felder v. Casey* . . . by simply amending its notice-of-claims statute to provide that no state

court would have jurisdiction of an action in which the plaintiff failed to give the required notice"). It is a "general and unassailable proposition" that "States may establish the rules of procedure governing litigation in their own courts," *Felder*, 487 U.S. at 138. They may also use whatever terms they wish in characterizing their own rules.[20] But when "state courts entertain a federally created cause of action, the federal right cannot be defeated by the forms of local practice." *Id.* (quotation marks omitted).[21]

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[20] The New York statute does not even describe Correction Law § 24 as "jurisdictional." The law is simply entitled "Civil actions against department personnel." N.Y. Correct. Law § 24.

[21] The Court's decision in *Johnson v. Fankell* is instructive. There, the Court upheld the application of Idaho Appellate Rule 11(a)(1) to a § 1983 action even though the state rule delayed until final judgment an appeal from a denial of qualified immunity that could have been heard immediately in federal court pursuant to 28 U.S.C. § 1291. The Court found that the Idaho appellate rule was not "outcome determinative" in that an appeal from the final judgment in the state court was still available. The Court distinguished the case from *Felder*, noting that in *Felder,* failure to comply with the Wisconsin notice-of-claim statute "resulted in a judgment dismissing a complaint that would not have been dismissed — at least not without a judicial determination of the merits of the claim — if the case had been filed in a federal court." 520 U.S. at 920 (citing *Felder*, 487 U.S. at 138).

Pursuant to Correction Law § 24, plaintiffs suing state corrections officers under § 1983 in state court do not even have the option of complying with a state rule. Rather, their damages remedy is extinguished even before they bring suit — a result that is wholly inconsistent with *Felder*, *Howlett*, and *Johnson*.

Contrary to the state rules at issue in *Douglas*, *Herb*, and *Mayfield*, Correction Law § 24 reflects New York's substantive disagreement with the scope of remedies provided by § 1983 to the extent the federal statute allows damages against state corrections officers.[22] As articulated by New York jurists, the unvarnished purpose of Correction Law § 24 is to avoid "voluminous, vexatious and, in many cases, meritless suits brought by prisoners" against corrections officers and the personal liability that may result from such suits. *Haywood*, 881 N.E.2d at 187 (Jones, J., dissenting) (citing *Arteaga v. State*, 527 N.E.2d 1194 (N.Y. 1988)); *see also Ierardi v. Sisco*, 119 F.3d 183, 187 (2d Cir. 1997) (citing *Arteaga*) (same).[23] As such, its purpose is comparable to that of the notice-of-claim provision in *Felder*, which was described as "advanc[ing] the State's legitimate interests in protecting against stale or fraudulent claims," *Felder*, 487 U.S. at 137, and "sift[ing] out 'specious claims'." *Id.* at 149.

In contrast, and as set forth in Point II *supra,* the "central purpose" — i.e., the federal policy — supporting § 1983 is "to provide compensatory relief to those deprived of their federal rights by state actors." *Felder*, 487 U.S. at 141. The fact that the state has opted for a statute supported by a different

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[22] The fact that it is neutrally applied to state and federal claims — as was the notice-of-claim provision in *Felder* — therefore does not save it. *See Felder*, 487 U.S. at 144.

[23] New York is free, of course, to indemnify state corrections officers who are sued under § 1983 in state court, thereby alleviating concerns about the personal liability of such defendants. What New York may not do is reformulate federal law to achieve this same policy goal.

policy cannot provide a "valid excuse" under the Court's jurisprudence because "[t]he Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Id.*

Correction Law § 24 also promises different outcomes depending on whether a § 1983 damages claim is brought in state or federal court. It is therefore "inconsistent with the federal interest in uniformity" that is so important to concurrent jurisdiction. *Johnson v. Fankell*, 520 U.S. at 920 (citing *Felder*, 487 U.S. at 153). Were a state able to opt out of specific categories of § 1983 cases, the shared responsibility of state and federal courts for enforcing federal remedies would be undermined.[24]

"Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Howlett*, 496 U.S. at 377-78 (quoting *Wilson*, 471 U.S. at 269). Yet that is precisely what Correction Law § 24 and the Court of Appeals decision have done. A decision from this Court upholding the Court of Appeals ruling would allow states and their courts to pick and choose which federal claims and remedies to enforce, leaving them "free to nullify for their own

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[24] Further, when one state opts out, it imposes burdens on the federal courts. *See Maine v. Thiboutot*, 448 U.S. 1, 11 n.12 (1980) (noting that "if fees were not available [in § 1983 cases] in state courts, federalism concerns would be raised because most plaintiffs would have no choice but to bring their complaints concerning state actions to federal courts").

people the legislative decisions that Congress has made on behalf of all the People." *Howlett*, 496 U.S. at 383.

CONCLUSION

For the reasons set forth above, the decision of the New York Court of Appeals upholding Correction Law § 24 as applied to § 1983 actions should be reversed.

Respectfully submitted,

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